



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR   | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|------------------------|---------------------|------------------|
| 10/621,860      | 07/16/2003  | Andrew R. Weisenberger | 062373              | 1759             |

38834 7590 02/08/2008  
WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP  
1250 CONNECTICUT AVENUE, NW  
SUITE 700  
WASHINGTON, DC 20036

|          |
|----------|
| EXAMINER |
|----------|

FRANK, RODNEY T

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

2856

|           |               |
|-----------|---------------|
| MAIL DATE | DELIVERY MODE |
|-----------|---------------|

02/08/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/621,860             | WEISENBERGER ET AL. |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | RODNEY T. FRANK        | 2856                |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,5-11,13-18,27-30,35 and 36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5-11,13-18,27-30,35 and 36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Response to Arguments***

1. Applicant's arguments, see the remarks, filed 5 November 2007, with respect to the rejection(s) of claim(s) 1, 5-11, 13-18, 27-30, 35 and 36 under 35 USC 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Rynhart et al. (U.S. patent Number 6,340,892; hereinafter referred to as Rynhart) and further in view of Skidmore et al. (U.S. Patent Application Publication Number 2003/0040934; hereinafter referred to as Skidmore).
2. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
4. Claims 1, 5-11, 13-18, 27-30, 35, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rynhart et al., and further in view of Skidmore et al.
5. Rynhart et al. (U.S. Patent Number 6,340,892; hereinafter referred to as Rynhart). Rynhart discloses that a moisture meter (1) has an LCD display (8) driven by a digital microcontroller (50) which generates digital moisture reading data. Readings are stored as discrete records in files. The microcontroller (51) stores a library of material data and automatically compensates signals from a capacitive/impedance

Art Unit: 2856

sensor circuit (51) according to both stored material parameter values and sensed temperature. Users may edit the parameter values. A non-removable cover (4) is used at the final stage of production to configure the meter for the nature of interfacing (such as serial port interfacing) required (Please see the abstract). Rynhart discloses a meter/sensor that is capable of measuring the moisture content of various structures. Rynhart also discloses that the data obtained by the sensor can be printed out via Microsoft Suite (i.e. Excel) software. While this would give us a printout of the moisture content data, there is nothing qualitative and “useful” about the data, as would be achieved by a certificate given from a home inspection. Skidmore et al. (U.S. Patent Application Publication Number 2003/0040934; hereinafter referred to as Skidmore) discloses that this invention is directed to the automated generation of a home inspection report according to home inspection information gathered from a home inspector during the inspection of a home. Also, this invention is directed to the subsequent creation of a home warranty insurance policy created according to the home inspection information so that a customized home warranty inspection policy based upon the home inspection information is provided (Please see the abstract). Skidmore discloses in paragraph [0020] discloses that the interior of a building is measured during a home inspection and the data is recorded and stored. Paragraph [0019] specifically addresses that instead of a whole inspection, only certain aspects, such as moisture issues, can be addressed and tested. Paragraph [0001] discloses that the data obtained can be formatted into a report and paragraph [0008] specifically discloses the ability to have data turned into a specific format, such as a form/certificate.

6. In regard to claims 1, and 11, Rynhart discloses a method and system for certifying at least a portion of structural components of an interior of a structure relative to moisture content, comprising the steps of: measuring moisture content levels within structural components of said portion of the interior of the structure; and providing a certificate of moisture content level measurements. Figure 10, for example outlines the various types of wood, wall materials, and roofing materials that can be measured.

Upon reading the specification in order to gain a better insight as to what the "certificate" being issued meant, it was determined by the examiner that the certificate is a document or report that is given upon the completion of a moisture test to determine whether a particular structure passed or failed the test based upon given parameters (page 2 line 33 through page 4 line 3 of the applicants specification, for example). In the Rynhart reference, moisture content is determined (see column 1 lines 25 and 26) for structural components of the interior of a structure (see column 2 line 65 through column 3 line 2). Then, since the certificate is a document that gives information regarding the results for the moisture test, Rynhart discloses beginning in column 6 with line 66 and continuing through column 7 line 2 whereby the use of Microsoft Office software can be used to obtain the generated data. Again pointing now to Skidmore, Skidmore specifically address the ability to translate home inspection data obtained into a usable format, such as a certificate of compliance or failure, based upon the results obtained.

In reference to claims 5-9, 14-18, 27, and 28 though the specific structure under test is not specifically disclosed in Rynhart, the reference discloses in column 1, lines 1

Art Unit: 2856

through 18 that the device is used for surveying and it has an advantage of being used in environments such as attic spaces. Since an attic is usually associated with a house and surveying is also used, amongst other things, during home inspection, the terminology used would refer to a structure that would meet the description of a "building". However, in view of the Skidmore reference being specific to home inspection and paragraph [0020] of Skidmore disclosing similar items of interest as Rynhart to be measured, then the use during a home inspection is viewed as obvious to one of ordinary skill in the art.

In reference to claims 10, 13, 29, and 30, though the specific percentage value that is considered to be desired is not specifically disclosed, official notice is taken that the percentages used to determine the moisture compliance or failure is a well established parameter in the building industry as the percentage of moisture content that can produce mold is found in many documents relating to home inspection and building. For example, an article from the Department of Wood and Paper Science; Housing and Clothing at the University of Minnesota entitled "Testing Housing Materials for Moisture" it states that if moisture content is measured to be less than 10%, then there is no need to worry, while a reading above 20% could indicate a serious moisture problem (this can also be found on line at the following internet address: <http://www.extension.umn.edu/info-u/household/BK270.html>). Therefore, these percentage parameters are viewed as knowledge well within the preview of one of ordinary skill in the art.

In reference to claims 35 and 36, the issuance of any compliance or failure criteria would be a part of a home inspection and during said inspection, moisture content levels are measured and an assessment of compliance or failure is determined and reported. This inspection method and means is disclosed in the Skidmore reference, and thus the issuance of a certificate is deemed to be disclosed as well.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RODNEY T. FRANK whose telephone number is (571)272-2193. The examiner can normally be reached on M-F 9-5:30 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron E. Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 10/621,860  
Art Unit: 2856

Page 7

/R. T. F./  
Examiner, Art Unit 2856  
February 8, 2008

/Hezron Williams/  
Supervisory Patent Examiner, Art Unit 2856